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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,460	02/04/2002	Brian N. Sedlak	577172001600	6390
43997	7590	05/18/2007		
OPTV/MOFO C/O MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD, SUITE 300 MCLEAN, VA 22102			EXAMINER NGUYEN BA, HOANG VU A	
			ART UNIT 2623	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/067,460	Applicant(s) SEDLAK ET AL.	
	Examiner Hoang-Vu A. Nguyen-Ba	Art Unit 2623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/29/03, 4/15/02</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is responsive to the application filed February 4, 2002.
2. Claims 1-15 have been examined. Claims 1, 5, 9 and 15 are independent claims.

### ***Priority***

3. The priority date considered for this application is February 2, 2001, which is the filing date of the Provisional Application No. 60/266,335.

### ***Oath/Declaration***

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because it does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

### ***Information Disclosure Statement***

5. The Office acknowledges receipt of the Information Disclosure Statements filed April 29, 2003 and April 15, 2002. They have been placed in the application file and the information referred to therein has been considered.

### ***Drawings***

6. The drawings filed April 2, 2002 are accepted by the examiner.

### ***Specification***

7. The specification is objected to because of the following minor informality: the Title of the Invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Objection***

8. Claims 13, 14 and 15 are objected to because of the following minor informalities:

**Claim 13:** Claim 13 recites the limitation "said rate of transmission." This limitation lacks proper antecedent basis.

**Claim 14:** Claim 13 recites the limitation "said rate of transmission." This limitation lacks proper antecedent basis.

**Claim 15:** the term "response" at line 12 appears to be a typographical error. The term "response" is suggested be changed to – responsive --

### ***Claim Rejections – 35 USC §112***

9. The following is a quotation of the second paragraph of the 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 3 and 5 are rejected under 35 U.S.C. §112 , second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claim 3:** Claim 13 recites the limitation "predetermined number." It is unclear as to what the "predetermined number" is and the specification does not appear to

provide a clear definition of the claimed predetermined number so that the metes and bounds of the claimed limitation can be ascertained for infringement purposes.

**Claim 5:** Claim 5 recites the limitation “adding one content item of said plurality of content items to said content item list if said one content item is in said content item list. It is unclear as to why there is a need to add a content item to a list that already has the same content item.

### ***Claim Rejections – 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejection under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,572,442 to Schulhof et al. (“Schulhof”).

#### **Claim 1**

Schulhof discloses *a method for transmitting requested content items in a broadband transmission system comprising:*

*receiving requests for a plurality of content items on an upstream path of said broadband transmission system (see at least 10:35-41);*

*creating a list of said content items (see at least 10:35-41);*

*creating a request count for each content item of said plurality of content items (see at least 10:35 – 11:5);*

*sorting said requests using said count (see at least 10:35 – 11:5); and*

*transmitting content items with a higher count more frequently than content items with a lower count (see at least 10:35 – 11:5).*

### **Claim 2**

The rejection of base claim 1 is incorporated. Schulhof further discloses *wherein said request count is the number of requests received during a predefined time period for each content item of said plurality of content items (see at least 10:52 – 11:5).*

### **Claim 3**

The rejection of base claim 1 is incorporated. Schulhof further discloses *removing said content item from said list of content items if said count is equal to or less than a predetermined number (see at least 11:10 – 41).*

### **Claim 4**

The rejection of base claim 1 is incorporated. Schulhof further discloses *wherein said step of transmitting further comprises: grouping content items with a count greater than or equal to a second predetermined number into a transmit group (see at least 10:42 – 11:41).*

### **Claim 5**

Schulhof discloses *a method for optimizing transmit bandwidth utilization in a broadband transmission system employing a content item list comprising:*

*receiving requests on an upstream path of said broadband transmission system for transmission of a plurality of content items (see at least 6:24-40; 7:34-53);*

*adding one content item of said plurality of content items to said content item list if said one content item is in said content item list (see at least 10:42 – 11:41);*

*determining a rate of request for each content item contained in said content item list; deleting content items from said content list for which the number of requests during a predefined time are less than or equal to a predefined rate of request (see at least 10:42 – 11:41); and*  
*transmitting content items in said content item list (see at least 10:42 – 11:41).*

#### **Claim 6**

The rejection of base claim 5 is incorporated. Schulhof further discloses *wherein said step of transmitting further comprises: transmitting content items with a higher rate of request more frequently than content items with a lower rate of request (see at least 11:16-41).*

#### **Claim 7**

Rejections of base claim 5 and intervening claim 6 are incorporated. Schulhof further discloses *wherein said step of transmitting further comprises: grouping of a plurality of said content items into a transmit package wherein said transmit package is of a predetermined maximum size (see at least 10:66 – 11:5).*

#### **Claim 8**

Rejections of base claim 5 and intervening claim 6 are incorporated. Schulhof further discloses *merging said content items with other transmitted data (see at least 11:1-41).*

#### **Claim 9**

Schulhof discloses *a system for optimizing bandwidth utilization in a broadband transmission system comprising:*

*a first database containing a plurality of content items (see at least FIG. 1, databases 14, 15, 16, 18);*

*a second database containing user request information for said content items (see at least FIG. 1, bins in the Information Request Manager software);*  
*a transmit unit (see at least FIG. 1, device 26);*  
*a server computer (see at least FIG. 1, system 10); and*  
*a software program (see at least (see at least FIG. 1, e.g., the Information Request Manager software) that processes said request information received across said broadband transmission system and determines a rate of request for each content item of said plurality of content items in said first database and establishes a frequency of transmission for each content item of said plurality of content items in said first database responsive to said rate of request for each content item of said plurality of content items in said first database (see at least 10:35 – 11:41).*

#### **Claim 10**

The rejection of base claim 9 is incorporated. Schulhof further discloses *wherein said transmit unit is a television transmitter (see at least FIG.1, device 28).*

#### **Claim 11**

The rejection of base claim 9 is incorporated. Schulhof further discloses *wherein said transmit unit is a server computer connected to a network (see at least FIG. 1, system 10).*

#### **Claim 12**

The rejection of base claim 9 is incorporated. Schulhof further discloses *a third database containing only those of said content items corresponding to said user request information for said content items (see at least 10:35 – 11:41, e.g., various bins in the Information Request Manager).*



### Claim 13

The rejection of base claim 9 is incorporated. Shulhof further discloses *wherein said rate of transmission is further responsive to available bandwidth for content item broadcast* (see at least 11:10-41).

### Claim 14

The rejection of base claim 9 is incorporated. Shulhof further discloses *wherein said rate of transmission is further responsive to duration of each content item of said plurality of content items in said first database* (see at least 11:10-41).

### Claim 15

Shulhof discloses *a method for managing information transmission in a broadband transmission system comprising:*

*receiving a plurality of requests across said broadband transmission system, each request of said plurality of requests specifying a program and content element of said program wherein said plurality of requests include a plurality of different programs* (see at least 10:35 – 11:41);

*determining a rate of request for each program of said plurality of different programs* (see at least 10:35 – 11:41);

*determining a rate of request for each content element for each program of said plurality of different programs* (see at least 10:35 – 11:41);

*establishing a broadcast schedule for at least two programs of said plurality of different programs wherein said broadcast schedule is response to said rate of request for said each program and each program of said at least two programs contains at least one content element, the selection thereof responsive to said rate of request for each content element for each program* (see at least 10:35 – 11:41).

*Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang-Vu "Antony" Nguyen-Ba whose telephone number is (571) 272-3701. The examiner can normally be reached on Tuesday-Friday from 7:05 am to 5:35 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, John Miller can be reached at (571) 272-7353.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2600 Group receptionist (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



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May 8, 2007